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19 PUBLISHING COMPANY

20
21 UNITED STATES DISTRICT COURT
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23 CENTRAL DISTRICT OF CALIFORNIA

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25 EDGE GAMES, LLC a California Limited Liability Company, Plaintiff, vs. HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY, a Massachusetts Corporation; and DOES 1-10, Defendants. Case No. CV13-02123 VAP (DTBx)
STIPULATION TO CONTINUE SCHEDULING ORDER DEADLINES
Current PTC: May 11, 2015
Current Trial Date: May 19, 2015
Proposed PTC: July 20, 2015
Proposed Trial Date: Aug. 4, 2015

26 HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY, a Massachusetts Corporation, Counter-Claimant, vs. EDGE GAMES, LLC a California Limited Liability Company, Counter-Defendant. (

1 WHEREAS, by Order dated December 3, 2014, the Court extended the initial
 2 expert designation deadline in this action to January 6, 2015, the rebuttal expert
 3 designation deadline to January 20, 2015 and the discovery cut-off to February 16,
 4 2015, in response to the ex parte application of Plaintiff Edge Games LLC (“Edge
 5 Games”).

6 WHEREAS, the Order dated December 3, 2014 has greatly shortened the
 7 period between the initial expert designation deadline and the rebuttal expert
 8 deadline: in their Stipulation dated October 4, 2014 the parties agreed to a six-week
 9 period between initial and rebuttal expert disclosures and the Court approved that
 10 schedule in its Order dated October 14, 2014; the Order dated December 3, 2014,
 11 however, has now shortened that six-week period to just 15 days.

12 WHEREAS, good cause exists to continue the rebuttal expert designation
 13 deadline, as the current 15-day period between the initial expert disclosure and the
 14 rebuttal expert disclosure period does not allow Defendant Houghton Mifflin
 15 Harcourt Publishing Company’s (“HMH”) survey expert adequate time to review the
 16 initial report of Plaintiff’s survey expert that will be disclosed on January 5, 2015,
 17 and to be able to conduct a rebuttal survey and produce a rebuttal expert report
 18 detailing the results of that survey.

19 WHEREAS, good cause exists to continue the rebuttal expert designation
 20 deadline to restore the original six-week period between the initial and rebuttal expert
 21 designation deadlines previously agreed to by the parties and approved by the Court
 22 so as to allow both parties sufficient time to complete their rebuttal reports.

23 WHEREAS, the extension of the expert deadlines requires moving the
 24 remaining dates on the Court’s Scheduling Order, including trial, in order to ensure
 25 that both parties have sufficient time to complete expert discovery without negatively
 26 impacting the remaining deadlines or the parties’ ability to prepare for summary
 27 judgment or trial.

28 WHEREAS, lead counsel for HMH, Stuart Dunwoody, has an existing two-

1 week trial in this Court before the Honorable André Birotte, set for June 30, 2015
2 that is expected to last at least two weeks, and therefore respectfully requests that any
3 continued trial date be set no earlier than August 4, 2015 so as not to conflict with the
4 other scheduled trial date.

5 WHEREAS, this case is currently scheduled to proceed as follows:

6 Initial Disclosure of Experts, Including Reports: 1/5/2015

7 Rebuttal Disclosure of Experts, Including Reports: 1/20/2015

8 Discovery Cutoff: 2/16/2015

9 Summary Judgment Motion Hearing Cut-Off: 3/30/2015

10 Pre-Trial Conference: 5/11/2015

11 Trial: 5/19/2015

12 NOW, THEREFORE, SUBJECT TO THE APPROVAL OF THE COURT,
13 THE PARTIES AGREE TO THE FOLLOWING REVISED SCHEDULE:

14 Rebuttal Disclosure of Experts, Including Reports: 2/17/2015 (Set for
15 Tuesday, as 2/16/2015 is a holiday)

16 Discovery Cutoff: 3/9/2015

17 Summary Judgment Motion Hearing Cut-Off: 5/4/2015

18 Pre-Trial Conference: 7/20/2015

19 Trial: 8/4/2015

20 So Stipulated.

21 DATED: December 10, 2014

22 WIRTZ LAW APC
23 RICHARD M. WIRTZ
24 ERIN K. BARNS

25 By: /s/Richard M. Wirtz
26 Richard M. Wirtz
27 Attorneys for Plaintiff
28 EDGE GAMES, LLC

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25 By: /s/Carla A. McCauley
26 Carla A. McCauley
27 Attorneys for Defendant
28 HOUGHTON MIFFLIN HARCOURT
PUBLISHING COMPANY

DECLARATION OF STUART DUNWOODY

I, Stuart R. Dunwoody, declare as follows:

3 1. I am licensed to practice law before all the courts in the States of
4 Washington and Oregon, have been admitted *pro hac vice* in this action, and am
5 admitted to the United States Court of Appeals for the Ninth Circuit. I am a partner
6 at Davis Wright Tremaine LLP, counsel for Defendant/Counterclaimant Houghton
7 Mifflin Harcourt Publishing Company (“HMH”). I submit this Declaration in
8 support of the parties’ Stipulation to Continue Scheduling Order Dates. I have
9 personal knowledge of the facts contained herein, and, if called upon as a witness, I
10 could and would testify competently about these facts, except for those matters stated
11 expressly upon information and belief, which matters are believed to be true.

12 2. This is the first request by Defendant HMH to advance dates set by the
13 Court in its Scheduling Orders. HMH previously stipulated on October 4, 2014 to
14 Plaintiff Edge Games' request to continue the Court's original Scheduling Order.
15 When it agreed to stipulate to that previous continuance request, HMH told Edge
16 Games that HMH needed a six-week period between initial and rebuttal expert
17 disclosures. HMH did so to ensure that its survey expert would have enough time to
18 conduct a rebuttal survey to respond to whatever survey Edge Games' expert
19 discloses at the initial expert disclosure deadline. Edge Games agreed to HMH's
20 request. The parties' stipulation, which this Court entered by Order dated October
21 14, 2014, therefore provided for an initial expert disclosure deadline of December 5,
22 2014 and a rebuttal period six weeks later, on January 16, 2014.

23 3. HMH recently opposed Plaintiff Edge Games' ex parte application to
24 further continue the initial expert discovery deadline, which this Court granted by
25 Order dated December 3, 2014. The Court's December 3 Order reduced from six
26 weeks to 15 days the period of time between the initial expert disclosure deadline and
27 the rebuttal expert disclosure deadline.

1 4. Good cause exists to continue the rebuttal expert discovery period from
 2 January 20, 2015 to February 17, 2015, in order to restore the six-week period
 3 between the initial expert disclosure deadline and the rebuttal expert disclosure
 4 deadline that the parties previously agreed to and the Court previously approved. I
 5 have conferred with HMH's survey expert, who has advised me that the current 15-
 6 day period between the initial expert disclosure deadline set for January 6, 2015 and
 7 the rebuttal expert disclosure deadline of January 20, 2015 is not enough time for him
 8 to review the initial expert report of Plaintiff Edge Games' survey expert, prepare
 9 and conduct a rebuttal survey, and prepare a rebuttal expert report. HMH's survey
 10 expert has informed me that he requires a minimum of 30 days to prepare and
 11 conduct the rebuttal survey, and additional time to prepare a rebuttal report.
 12 Consequently, HMH respectfully requests that the six-week period originally agreed
 13 to by the parties and entered by this Court in its October 14, 2014 Scheduling Order
 14 be restored.

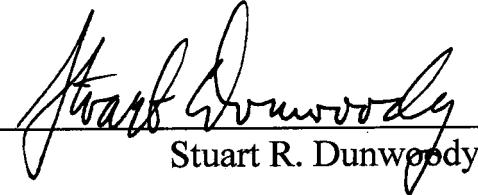
15 5. Good cause exists to continue the remaining Scheduling Order dates so
 16 as to allow both parties time to complete their rebuttal reports and discovery in this
 17 action without interfering with preparations for summary judgment and trial.
 18 Specifically, HMH anticipates that its summary judgment motion will be based, in
 19 part, upon the testimony of the initial and rebuttal experts designated by both parties,
 20 and therefore the hearing date for summary judgment must be continued in order to
 21 avoid having the filing deadline for summary judgment not to coincide with the
 22 expert designation deadlines and the subsequent discovery deadline.

23 6. Good cause exists to advance the trial date to August 4, 2015, as I have
 24 a long-standing trial before Judge Birotte in this Court that is set to commence on
 25 June 30, 2015 and is expected to last at least two weeks. Consequently, no continued
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1 trial in this action could be set before August 4, 2015 without substantially
2 overlapping and interfering with my other scheduled trial date.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on December 10, 2014.

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7 Stuart R. Dunwoody

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